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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/694,869	10/29/2003	Anne Abriat	231032US0	5702
22850 7590 10/05/2007 OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			EXAMINER VAKILI, ZOHREH	
			ART UNIT 1614	PAPER NUMBER
			NOTIFICATION DATE 10/05/2007	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 10/694,869	<b>Applicant(s)</b> ABRIAT ET AL.	
	<b>Examiner</b> Zohreh Vakili	<b>Art Unit</b> 1614	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 February 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>10/29/2003</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### **Claims 1-14 are presented for examination.**

Applicant's response to the election of species requirement filed on February 12, 2007 is acknowledged. Accordingly, Applicant elects a single specie for alcohol, aldehyde, ester, ketone with traverse. Applicant submit that a search of the entire claim set without the election would not be burdensome. Examiner does not agree with argument, for hypothetical exemplification purposes only, if each of the variables above were each limited to 10 possible moieties there would be  $10^6$  possible species of product to be searched. Thus, it would be an undue burden to examine all of the above moieties in one application and the election of species for examination purposes as indicated above is deemed proper. Applicant elects geraniol for alcohol, hydroxycitronellal for aldehyde, benzyl salicylate for ester, coumarin for ketone, and ethanol as solvent. Claims 1-14 read on the elected species and are herein examined on the merits.

Applicants' submission of Information Disclosure Statements (IDS) filed October 29, 2003 has been received and entered into the present application.

### ***Claim Rejections - 35 USC § 112, First Paragraph***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the

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best mode contemplated by the inventor of carrying out his invention.

Claims 1-14 are rejected under 35 U.S.C. 112, first paragraph, because the specification does not reasonably provide enablement for the prevention of the wrinkles of the face. The specification does not enable any person skilled in the art to which it pertains to make or use the invention commensurate in scope with these claims.

In this regard, the application disclosure and claims have been compared per the factors indicated in the decision *In re Wands*, 8 USPQ2nd 1400 (Fed. Cir. 1988) As to undue experimentation.

The factors include:

- 1) the nature of the invention;
- 2) the breadth of the claims;
- 3) the predictability or unpredictability of the art;
- 4) the relative skill of those in the art;
- 5) the amount of direction or guidance presented;
- 6) the presence or absence of working examples;
- 7) the quantity of experimentation necessary;

Each factor is addressed below on the basis of comparison of the disclosure, the claims and the state of the art in the assessment of undue experimentation.

- 1) the nature of the invention; the invention is directed to a process for preventing wrinkles of the face.
- 2) the breadth of the claims; the scope of the method claims include the prevention of wrinkles of the face.
- 3) the predictability or unpredictability of the art; the art does not enable a person of ordinary skill in the art to make and use the claimed invention without resorting to undue experimentation. The burden of enabling one skilled in the art to prevent wrinkles of the

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face would be much greater than that enabling the treatment. In the instant case, the specification does not provide guidance as to how one skilled in the art would accomplish the objective of preventing wrinkles of the face. Nor is there any guidance provided as to a specific protocol to be utilized in order to show the efficacy of the presently claimed active ingredients for preventing face wrinkles.

No experimental evidence or mechanism of action for supporting preventing face wrinkles using the specified actives by simply administering, by any method, an amount of the claim specified active agents. The specification fails to enable one of ordinary skill in the art to practice the presently claimed method for preventing the risk of face wrinkles.

It is unpredictable to practice preventing with a chemical administration as instantly claimed. The specification is viewed as lacking an adequate enablement of where face wrinkles may be actually prevented.

- 4) the relative skill of those in the art; the relative skill of those in the art of pharmaceuticals is high.
- 5) the amount of direction or guidance presented; the specification and the example does not provide any guidance in terms of preventing wrinkles of the face.
- 6) the presence or absence of working examples; no working examples are provided for preventing face wrinkles, for example in a patient, in the specification. The applicant has not provided any competent evidence or disclosed any tests that are highly predictive for the preventative effects of the instant composition. Note that in cases involving physiological activity such as the instant case, "the scope of enablement

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obviously varies inversely with the degree of unpredictability of the factors involved".

See *In re Fisher*, 427 F.2d 833, 839, 166 USPQ 18, 24 (CCPA 1970).

7) the quantity of experimentation necessary; the quantity of experimentation would be an undue burden to one of ordinary skill in the art and amount to the trial and error type of experimentation. Thus, factors such as "sufficient working examples", "the level of skill in the art" and "predictability", etc. have been demonstrated to be sufficiently lacking in the instant case for the instant process claims. In view of the breadth of the claims, the chemical nature of the invention and unpredictability of preventing wrinkles of the face, and the lack of working examples regarding the activity as claimed, one skilled in the art would have to undergo an undue amount of experimentation to use the instantly claimed invention commensurate in scope with the claims.

In consideration of each of factors 1-7, it is apparent that there is undue experimentation because of variability in prediction of outcome that is not addressed by the present application disclosure, examples, teaching and guidance presented. Absent factual data to the contrary, the amount and level of experimentation needed is undue.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the

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invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-5, 12-14 are rejected under 35 U.S.C. 102(b) as anticipated by Connor et al. (6395701 B1).

Claims 1-5, and 12-14 are directed to a process for preventing and/or smoothing out expression wrinkles of the face.

Connor et al. disclose of perfumes and perfumery ingredients useful in the present compositions and processes comprise chemical ingredients such as aldehydes, ketones, esters, and the like. Also, essences such as rose extract and musk are used. Individual perfumery ingredients can comprise from about 0.0001% to about 90% of a finished perfume composition (see col. 75, lines 32-42). Example of an aldehyde used is hydroxycitronellal (see col. 75, line 75), example of a ketone is coumarin (see col. 75, line 62), example of ester is benzyl salicylate (see col. 76, line 4), example of an alcohol is geraniol (see col. 76, line 28) and ethanol as solvent (see col. 76, line 60). The skin care composition includes agents for preventing, retarding, arresting, and/or reversing skin wrinkles such as retinol and retinyl palmitate. Also, includes moisturizers (see col. 77, lines 50-62). See col. 89 for additional examples of fragrances such as bergamot oil, musk, geraniol, hydroxycitronell, benzyl salicylate, and ethanol as solvent.

Consequently, the reference anticipates the claimed invention defined in claims 1-5, and 12-14.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Connor et al. (US Patent No. 6395701 B1), in view of Piterski et al. (US Patent No. 6780825 B2), and further in view of Toomim et al. (US Patent No. 5505208).

Claims 1-14 are directed to a process for preventing and/or smoothing out expression wrinkles of the face in an aromatherapy system.

Connor et al. disclose of perfumes and perfumery ingredients useful in the present compositions and processes comprise chemical ingredients such as aldehydes,



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ketones, esters, and the like. Also, essences such as rose extract and musk are used. Individual perfumery ingredients can comprise from about 0.0001% to about 90% of a finished perfume composition (see col. 75, lines 32-42). Example of an aldehyde used is hydroxycitronellal (see col. 75, line 75), example of a ketone is coumarin (see col. 75, line 62), example of ester is benzyl salicylate (see col. 76, line 4), example of an alcohol is geraniol (see col. 76, line 28) and ethanol as solvent (see col. 76, line 60). The skin care composition includes agents for preventing, retarding, arresting, and/or reversing skin wrinkles such as retinol and retinyl palmitate. Also, includes moisturizers (see col. 77, lines 50-62). See col. 89 for additional examples of fragrances such as bergamot oil, musk, geraniol, hydroxycitronell, benzyl salicylate, and ethanol as solvent.

Piterski et al. teach of a mild foaming cleanser composition. The cleanser composition has a moisturizer system, an aromatherapy system and a solvent system. The moisturizer system further includes a milk protein. In addition, the cleanser composition may also include fragrance (see abstract). The moisturizer system is for nourishing the skin and an aromatherapy system for promoting calming effect to the user (see col. 1, lines 11-17). Aromatherapy has been used since ancient times to reduce stress, relax, uplift, and restore emotional well-being (see col. 1, lines 42-44). Aromatherapy has been used for centuries as a way to promote physical and mental well being. Essential oils extracted from flowers, herbs, spices, woods, and fibers, when inhaled, are believed to have subtle effects on a person's mind and emotions. In addition, it is believed that when the essential oils penetrate the skin and enter the bloodstream and immune system, they work in a physiological manner to promote

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healing (col. 5, lines 59-67). Essential oils are mixtures of different organic molecules, such as alcohols, esters, aldehydes, ketones and phenols. It is believed that it is the interaction between each and every component and/or molecule that gives an essential oil its particular character and unique therapeutic properties. Therefore, the use of one or more essential oils in the present lotion composition not only provides a calming effect, it may also provide beneficial healing effects. A variety of essential oils may be used for the present invention. Suitable essential oils for use in the present lotion composition include, for example, Bergamot (*Citrus Aurantium Bergamia*) Oil, Musk Rose (*Rosa Moschata*) Oil, Rose Oil (see col. 6, lines 7-65). The solvent system in the composition the use for example, water and alcohol, The solvent or solvent system is present in the composition in an amount about 75 wt. % to about 98 wt. % based on the total weight of the composition (see col. 7, lines 36-38).

Toomim et al. teach of a method for collecting back muscle dysfunction which comprises collecting electrical muscle activity measurements by applying a plurality of electrodes in a pattern across a patient's back or test subject's back, and measuring the electrical activity at each of these electrodes and storing these measurements at the same time. The database of these sets of measurements from the number of individuals is generated so that a normative sample for comparison is formed. A patient's back muscle activity is quantified by collecting electrical muscle activity measurements for the patient and comparing the patient's electrical muscle activity measurements ratios to the sample average ratios of the normative group (see

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abstract). See Fig. 2 for patient's back muscles being tested including upper and middle trapezius.

It would have been obvious to one of ordinary skill in the art to use the teachings of the above references to create a composition made of fragrances and a process of aromatherapy for muscle relaxation for those of need. It would have been obvious to use the components for an aromatherapy composition on a stressed patient and after relaxation to measure the muscles activity by the teachings of Toomim et al. against a population that has not been treated by the aromatherapy composition.

One would have been motivated to create such a composition because Connor et al. teach all the necessary components of a skin care product that can be used in an aromatherapy process as taught by Pinterski et al. Pinterski et al. teach that aromatherapy promotes calming, relaxation, and reduces stress and the back muscle dysfunction can be measured as taught by Toomim et al. Therefore, one of ordinary skill in the art would have been motivated to use the composition of Connor et al. to develop an anti-wrinkle composition along with Pinterski et al. teaching of an aromatherapy system and measuring the muscular activity of the trapezius muscle as taught by Toomim et al.

Finally, one would have a reasonable expectation of success given that Conner et al. and Pinterski et al. along with Toomim et al. provide a detailed blueprint for the process of preventing facial wrinkles.

Thus in the absence of evidence to the contrary, the invention of claims 1-14 would have been prima facie obvious as a whole to one of ordinary skill in the art at the time the invention was made.

### Conclusion

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zohreh Vakili whose telephone number is 571-272-3099. The examiner can normally be reached on 8:30-5:00 Mon.-Fri.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin Marschel, can be reached on 571-272-0718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Zohreh Vakili

Patent Examiner  
1614

September 27, 2007

  
ARDIN H. MARSCHEL  
SUPERVISORY PATENT EXAMINER